IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7178 of 1989
with
CIVIL APPLICATION No.5494 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOBHA GRAM PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 7178 of 1989
(MR PB MAJMUDAR) for Petitioner No. 1-2
..... for Respondent No. 1-2,4-6
MR HS MUNSHAW for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 10/10/2002

ORAL JUDGEMENT

Leave to delete respondents No.5 and 6 as party respondents.

2. With the consent of the parties, when the Civil Application No.5494/2002 is taken up for hearing, since the main matter is of 1989 being SCA No.7178/1989, the main matter itself is taken up for final hearing today.

3. Heard Mr.Majmudar, learned Counsel for the petitioner, Mr.Sompura, learned AGP for respondents No.1 and 2, Mr.Munshaw, learned Counsel for respondents No.3 and 4.

4. The petition is preferred against the notification Annexure "D" dated 13th September, 1989, whereby existing village Mobha Gram Panchayat is divided into two village Panchayats namely, Mobha Gram Panchayat and Mobha Road Gram Panchayat. The said notification is in exercise of the power under Section 9(2) of the Gujarat Panchayats Act, 1961 (hereinafter referred to as the "Act of 1961").

5. When this petition was admitted on 27-10-1989, the operation of the impugned notification was stayed and as a result thereof, the bifurcation has not taken place till today. When this petition is taken up for final hearing a period of about 12 years has passed and new Act of 1993 (hereinafter referred to as the "Act of 1993") has come into force. It is clear from the provisions of the Act of 1961 as well as of the Act of 1993 that while taking decision of bifurcating any Gram Panchayat or altering the limit of any Gram Panchayat the circumstances as per the provisions of the Act are required to be considered. The view of the Gram Panchayat and also if required the view of Taluka Panchayat are to be considered. When the impugned notification was published, the circumstances then prevailing cannot be said to be the same prevailing now or in any case, the consideration which weighed to the authorities at the time when the decision was taken in 1989 while issuing notification would not be and cannot be the same, if such a notification or such an exercise of division of Gram Panchayat is to be made as on today.

6. It goes without saying that if at present the limits of the Gram Panchayat are to be altered or new two Gram Panchayats are to be formed, then also the authorities will have to consider independently the matter and will have to consider the material as available on record today including that of population, financial position, geographical situation and other

requirements as per the provisions of the Act of 1993. At the same time, merely because the notification of 1989 is stayed, it cannot be concluded that all time to come there cannot be any division of Gram Panchayat or formation of new Gram Panchayats from the existing Gram Panchayats. In my view, since the period of more than 12 years has passed on account of the pendency of the petition, no useful purpose be served in deciding the questions which are raised in this petition and it would be rather better to leave the matter to the authorities to consider afresh as to whether the bifurcation of existing Mobha Gram Panchayat should be made or not.

7. In view of the above, I find that the following directions would meet with the ends of justice:

7.1. It would be open to the District Panchayat to consider the matter afresh for the purpose of division of Mobha Gram Panchayat into Mobha Gram Panchayat and Mobha Road Gram Panchayat or any other division, which may be permissible under the law. It is needless to say that if the matter is considered afresh, the competent authority will be required to follow the necessary procedure as provided under the Act of 1993, as prevailing today.

7.2. Until the fresh decision is taken and published, the impugned notification would not be given effect.

8. The petition is disposed of in terms of the aforesaid directions. Rule discharged. No costs.

9. In view of the aforesaid order passed in main SCA no order in this Civil Application No.5494/2002.

10-10-2002 (Jayant Patel, J.)

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